

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

PHILLIP J. LYONS,

Plaintiff,

vs.

STATE OF NEVADA ex rel, c/o ORTIZ, et
al.,

Defendants.

Case No. 2:10-CV-00707-JCM-(LRL)

ORDER

The court found defects in plaintiff's complaint, and the court gave plaintiff an opportunity to amend the complaint to correct those defects. Order (#11). Plaintiff responded with a motion for relief from order (#12). The court denied that motion and gave plaintiff another opportunity to file an amended complaint. Order (#14). Plaintiff responded with another motion for reconsideration (#15). Despite being given two opportunities to correct the defects of the complaint, plaintiff has not filed an amended complaint.

As noted in its earlier order (#11), parts of counts 1, 2, 3, 4, 5, and 7 stated claims upon which relief can be granted. However, other parts of those counts were defective, in counts 1, 2, 3, 5, and 7 because plaintiff did not allege facts showing how supervisors caused constitutional violations; part of count 4 was defective because plaintiff did not allege any facts that could show how deprivation of a toothbrush, toothpaste, and towel for one night was sufficiently serious to amount to a constitutional violation. Plaintiff had the opportunity to correct or to omit those defects. Because he has not taken the opportunity, the court will not re-write those counts for him. Instead, the court will dismiss those counts.

1 Count 6, and with it defendants Howell, Williams, Cox, and Skolnick, remain. The
2 court will ask the Attorney General of the State of Nevada whether she can accept service on behalf
3 of those defendants.

4 IT IS THEREFORE ORDERED that plaintiff's motion to review order #14 in
5 relation to doc. #12 (#15) is **DENIED**.

6 IT IS FURTHER ORDERED that counts 1, 2, 3, 4, 5, and 7 of the complaint are
7 **DISMISSED** for failure to state a claim upon which relief can be granted.

8 IT IS FURTHER ORDERED that defendants State of Nevada, Ortiz, Baker, Henley,
9 Donat, Helling, Sims, Gentry, Pope, Nielsen, Terance, Baze, Palmer, Vallaster, Soonwing,
10 Gonzales, Ritchie, Dutton, Jones, Willis, Endel, McDaniel, Adams, Klein, Burson, and Halstead are
11 **DISMISSED** from this action.

12 IT IS FURTHER ORDERED that the Attorney General shall advise the court within
13 twenty (20) days from the date that this order is entered whether service of process for defendants
14 Howell, Williams, Cox, and Skolnick is accepted. Within thirty (30) days of the date of the notice
15 of acceptance of service or the notice of non-acceptance of service, the Attorney General shall file
16 and serve an answer or other response to the complaint on behalf of the defendants who have been
17 served. If service cannot be accepted for any of the named defendants, then plaintiff will need to
18 file a motion identifying the unserved defendant(s), requesting the issuance of a summons, and
19 specifying a full name and address for said defendant(s).

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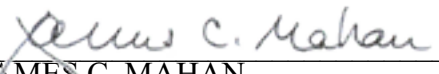
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1 IT IS FURTHER ORDERED that henceforth, plaintiff shall serve upon defendants
2 or, if appearance has been entered by counsel, upon the attorney(s), a copy of every pleading,
3 motion or other document submitted for consideration by the court. Plaintiff shall include with the
4 original paper submitted for filing a certificate stating the date that a true and correct copy of the
5 document was mailed to the defendants or counsel for the defendants. The court may disregard any
6 paper received by a district judge or magistrate judge which has not been filed with the clerk, and
7 any paper received by a district judge, magistrate judge or the clerk which fails to include a
8 certificate of service.

9 DATED: January 31, 2011.

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12 JAMES C. MAHAN
13 United States District Judge
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